

# SENATE BILL NO. 191

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

0102S.01H

KRISTINA MARTIN, Secretary

## AN ACT

To amend chapter 455, RSMo, by adding thereto one new section relating to extreme risk orders of protection, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 455, RSMo, is amended by adding thereto one new section, to be known as section 455.096, to read as follows:

**455.096. 1. In addition to any other jurisdictional grounds provided by law, a court shall have jurisdiction to enter an extreme risk order of protection restraining or enjoining the respondent from possessing any firearms.**

**2. (1) Upon the filing of a verified petition by a law enforcement officer or agency pursuant to this section, and for good cause shown in the petition, the court may immediately issue an ex parte order of protection. An immediate and present danger of the respondent causing personal injury to him or herself or others shall constitute good cause shown for purposes of this section. An ex parte order of protection entered by the court shall take effect when entered and shall remain in effect until there is valid service of process and a hearing is held on the motion within fifteen days of the filing of the petition.**

**(2) Failure to serve an ex parte order of protection on the respondent shall not affect the validity or enforceability of such order. If the respondent is less**

19 than eighteen years of age, unless otherwise emancipated,  
20 service of process shall be made upon a custodial parent or  
21 guardian of the respondent, or upon a guardian ad litem  
22 appointed by the court, requiring that the person appear and  
23 bring the respondent before the court at the time and place  
24 stated.

25 (3) If an ex parte order is entered and the respondent  
26 is less than eighteen years of age, the court shall transfer  
27 the case to juvenile court for a hearing on a full order of  
28 protection. The court shall appoint a guardian ad litem for  
29 any such respondent not represented by a parent or guardian.

30 (4) The law enforcement officer or agency shall be  
31 responsible for providing notice to a family or household  
32 member of the respondent and to any known third party who  
33 may be at risk of violence. The notice shall state that the  
34 law enforcement officer or agency intends to petition the  
35 court for an extreme risk order of protection or has already  
36 done so, and include referrals to appropriate resources,  
37 including mental health, domestic violence, and counseling  
38 resources. The law enforcement officer or agency shall  
39 attest in the petition to having provided such notice, or  
40 attest to the steps that shall be taken to provide such  
41 notice.

42 3. Upon issuance of any ex parte order of protection  
43 under subsection 2 of this section, the court shall order  
44 the respondent to surrender to the local law enforcement  
45 agency where the respondent resides, all firearms in the  
46 respondent's custody, control, or possession. The law  
47 enforcement officer serving any ex parte order of protection  
48 shall provide the respondent to the order an opportunity to  
49 comply with the order by surrendering all firearms in his or  
50 her custody, control, or possession. If the respondent does

51 not comply, the law enforcement officer serving the order  
52 shall conduct a lawful search and seizure of any firearms of  
53 the respondent and in any area where probable cause exists  
54 that a firearm to be surrendered pursuant to the order is  
55 located. The law enforcement agency shall hold all  
56 surrendered firearms until a hearing is held on the petition  
57 for the extreme risk order of protection.

58 4. Not later than fifteen days after the filing of a  
59 verified petition that meets the requirements of this  
60 section, a hearing shall be held unless the court deems, for  
61 good cause shown, that a continuance should be granted. At  
62 the hearing, if the law enforcement officer or agency has  
63 proved the allegation that the respondent poses a  
64 significant danger to him or herself or others by a  
65 preponderance of the evidence, the court shall issue a full  
66 extreme risk order of protection for a period of time of one  
67 year.

68 5. Upon issuance of any full extreme risk order of  
69 protection under subsection 4 of this section, the court  
70 shall order the respondent to surrender to the local law  
71 enforcement agency where the respondent resides, all  
72 firearms in the respondent's custody, control, or  
73 possession. If the respondent has been identified in the  
74 petition as being required to carry a firearm as a condition  
75 of the respondent's employment, the court shall notify the  
76 respondent's employer of the existence of the order. If the  
77 respondent holds a concealed carry permit pursuant to  
78 section 571.101, the court shall order a revocation of the  
79 concealed carry permit.

80 (1) The law enforcement officer serving any extreme  
81 risk order of protection shall provide the respondent to the  
82 order an opportunity to comply with the order by

83 surrendering all firearms in his or her custody, control, or  
84 possession. If the respondent does not comply, the law  
85 enforcement officer serving the order shall:

86 (a) Conduct a lawful search of the respondent and any  
87 area where probable cause exists that a firearm to be  
88 surrendered pursuant to the order is located; and

89 (b) Take possession of all firearms belonging to the  
90 respondent that are surrendered, in plain sight, or  
91 discovered pursuant to a lawful search conducted pursuant to  
92 paragraph (a) of this subdivision.

93 (2) If personal service by a law enforcement officer  
94 is not possible, or not required because the respondent was  
95 present at the extreme risk order of protection hearing, the  
96 respondent shall surrender the firearms in a safe manner to  
97 the control of the local law enforcement agency within forty-  
98 eight hours of being served with the order by alternate  
99 service or within forty-eight hours of the hearing or final  
100 decision at which the respondent was present.

101 (3) At the time of surrender, a law enforcement  
102 officer taking possession of a firearm shall issue a receipt  
103 identifying all firearms that have been surrendered and  
104 provide a copy of the receipt to the respondent. Within  
105 seventy-two hours after service of the order, the officer  
106 serving the order shall file the original receipt with the  
107 court and shall ensure that his or her law enforcement  
108 agency retains a copy of the receipt.

109 (4) Upon the sworn statement or testimony of any law  
110 enforcement officer alleging that the respondent has failed  
111 to comply with the surrender of firearms as required by an  
112 order issued under this subsection and subsection 3 of this  
113 section, the court shall determine whether probable cause  
114 exists to believe that the respondent has failed to

115 surrender all firearms in his or her possession, custody, or  
116 control. If probable cause exists, the court shall issue a  
117 warrant describing the firearms and authorizing a search of  
118 the locations where the firearms are reasonably believed to  
119 be and the seizure of any firearms discovered pursuant to  
120 such search.

121 (5) If a person other than the respondent claims title  
122 to any firearms surrendered pursuant to this subsection and  
123 subsection 3 of this section, and he or she is determined by  
124 the law enforcement agency to be the lawful owner of the  
125 firearm, the firearm shall be returned to him or her,  
126 provided that:

127 (a) The firearm is removed from the respondent's  
128 custody, control, or possession and the lawful owner agrees  
129 to store the firearm in a manner such that the respondent  
130 does not have access to or control of the firearm; and

131 (b) The firearm is not otherwise unlawfully possessed  
132 by the owner.

133 (6) A respondent to an extreme risk order of  
134 protection may file a motion to modify or rescind that order  
135 of protection. The respondent may request a hearing on such  
136 a motion with the court that issued the original extreme  
137 risk order of protection. The court shall conduct a hearing  
138 on the motion to modify or rescind an extreme risk order of  
139 protection within fifteen days after the motion is filed.  
140 At the hearing, if the respondent has proved by a  
141 preponderance of the evidence that the extreme risk order of  
142 protection must be modified or rescinded, the court shall  
143 modify or rescind the extreme risk order of protection.

144 6. If an extreme risk order of protection is  
145 terminated or expires without renewal, a law enforcement  
146 agency holding any firearm that has been surrendered

147 pursuant to subsections 3 and 5 of this section shall return  
148 any surrendered firearm requested by a respondent only after  
149 confirming, through a background check administered by the  
150 state highway patrol under section 43.543, that the  
151 respondent is currently eligible to own or possess firearms  
152 under federal and state law and after confirming with the  
153 court that the extreme risk order of protection has  
154 terminated or has expired without renewal.

155         7. (1) The law enforcement officer or agency may  
156 renew the extreme risk order of protection if probable cause  
157 is shown that the respondent continues to pose a significant  
158 risk of personal injury to him or herself or others by  
159 possessing a firearm. The extreme risk order of protection  
160 may be renewed for up to one year from the expiration of the  
161 preceding extreme risk order of protection. Written notice  
162 of a hearing on the motion to renew an extreme risk order of  
163 protection shall be given to the respondent by the court.

164         (2) A law enforcement agency shall, if requested,  
165 provide prior notice of the return of a firearm to a  
166 respondent or to family or household members of the  
167 respondent.

168         (3) Any firearm surrendered by a respondent pursuant  
169 to subsections 3 and 5 of this section that remains  
170 unclaimed by the lawful owner shall be disposed of in  
171 accordance with the law enforcement agency's policies and  
172 procedures for the disposal of firearms in police custody.

173         8. The clerk of any court that issues an extreme risk  
174 order of protection shall send the Missouri state highway  
175 patrol a copy of the order issued by that court within forty-  
176 eight hours of the court issuing the order. Upon receiving  
177 an extreme risk order of protection, the Missouri state  
178 highway patrol shall enter the extreme risk order of

179 protection into the Missouri uniform law enforcement system  
180 (MULES) within forty-eight hours of receiving notice of the  
181 order.

182 9. A violation of the terms and conditions of an ex  
183 parte order of protection pursuant to this section of which  
184 the respondent has notice, shall be a class A misdemeanor  
185 unless the respondent has previously pleaded guilty to or  
186 has been found guilty in any division of the circuit court  
187 of violating an ex parte order of protection or a full order  
188 of protection within five years of the date of the  
189 subsequent violation, in which case the subsequent violation  
190 shall be a class E felony. Evidence of prior pleas of  
191 guilty or findings of guilt shall be heard by the court out  
192 of the presence of the jury prior to submission of the case  
193 to the jury. If the court finds the existence of such prior  
194 pleas of guilty or finding of guilt beyond a reasonable  
195 doubt, the court shall decide the extent or duration of  
196 sentence or other disposition and shall not instruct the  
197 jury as to the range of punishment or allow the jury to  
198 assess and declare the punishment as a part of its verdict.

199 10. A violation of the terms and conditions of a full  
200 order of protection pursuant to this section shall be a  
201 class A misdemeanor, unless the respondent has previously  
202 pleaded guilty to or has been found guilty in any division  
203 of the circuit court of violating an ex parte order of  
204 protection or a full order of protection within five years  
205 of the date of the subsequent violation, in which case the  
206 subsequent violation shall be a class E felony. Evidence of  
207 prior pleas of guilty or findings of guilt shall be heard by  
208 the court out of the presence of the jury prior to  
209 submission of the case to the jury. If the court finds the  
210 existence of such prior plea of guilty or finding of guilt

211 beyond a reasonable doubt, the court shall decide the extent  
212 or duration of the sentence or other disposition and shall  
213 not instruct the jury as to the range of punishment or allow  
214 the jury to assess and declare the punishment as a part of  
215 its verdict. For the purposes of this subsection, in  
216 addition to the notice provided by actual service of the  
217 order, a party is deemed to have notice of an order of  
218 protection if:

219 (1) The law enforcement officer responding to a call  
220 of a reported violation of an order of protection presented  
221 a copy of the order of protection to the respondent; or

222 (2) Notice is given by actual communication to the  
223 respondent in a manner reasonably likely to advise the  
224 respondent.

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